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TAGS: [EINV](#) [ETRD](#) [EFIN](#) [ECON](#) [USTR](#) [SF](#)  
SUBJECT: SOUTH AFRICA: BEE CODES OF GOOD PRACTICE  
FRAMEWORK FOR MEASUREMENT

¶1. (U) Summary. On November 1, the Department of Trade and Industry released the final version of the first two Codes of Good Practice for Broad-based Black Economic Empowerment (BEE) along with the "Framework for Measurement." The codes, once promulgated, will set forth the criteria and methodology for scoring compliance with BEE objectives. The Framework identifies seven criteria to be measured by means of a generic scorecard with specific targets and rules for compliance. Firms will be assigned BEE status based on their overall scorecard performance, which will determine the BEE procurement recognition its will be entitled to. To establish a BEE status, all firms must have their BEE compliance audited by an accredited verification agency annually. End Summary.

#### Codes of Good Practice and Framework for Measurement

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¶2. (U) On November 1 2005, the South African Department of Trade and Industry (DTI) released the final version of its "Framework for Measurement of Broad Based Black Economic Empowerment" (the Framework) along with the first two Codes of Good Practice. The Framework sets forth a generic scorecard along with a number of measurement principles. Code 100 details how firms should comply with targets for BEE equity (septel). Code 200 details how firms should comply with targets for BEE management and control (septel). The subject of this cable is the Framework, the centerpiece of which is the generic scorecard. All BEE Codes of Good Practice, including the Framework, may be found at the following Internet website:

<http://www.dti.gov.za/bee/CODESOFGOODPRACTICE 2005.htm>

¶3. (U) Since the government released drafts of the Framework and the first two codes for comment in December of 2004, the South African business community has eagerly awaited the final version. During the comment period that was extended to March 7 2005, DTI received more than 350 submissions from both large and small firms, as well as individuals. In June of 2005, the Minister of Trade and Industry met with selected stakeholders to consider modifications to the second draft. The Cabinet approved the final draft on October 31 2005. DTI released it on November 1.

14. (U) A draft of the remaining seven codes is scheduled to be released in December of 2005 or early 2006. Codes 300 - 700 and 1000 will deal with employment equity, skills development, enterprise development, preferential procurement, and small and medium sized enterprises. Code 800 will incorporate industry sector codes (based on industry charters) as they are approved by the Minister of Trade and Industry. Draft guidelines on BEE equity for multinationals, which form a subpart of Code 100, will be released for public comment along with the others. Only after all the codes are in final will the Minister of Trade and Industry promulgate them together in the Government Gazette according to Section 9(1) of the BEE Act 53 of 2003 ("the Act"). Thereafter, the codes will carry the force of law. All organs of state and public entities must take into consideration the level of BEE contribution of all firms seeking to qualify and/or compete for government business, licenses and concessions, public-private partnerships, and/or the purchase of state-owned assets. The Act states that the Minister shall review the Codes of Good Practice after 10 years, but does not indicate to what end.

#### Generic Scorecard

15. (U) The Framework identifies BEE criteria to be measured by means of a generic scorecard. Each of seven criterion contain specific targets and rules for BEE compliance to be detailed in specific codes, only two of which at this time are in final form (Code 100 on BEE ownership and Code 200 on BEE management). The criteria include BEE ownership, BEE management, BEE employment, BEE skills development, BEE procurement, BEE enterprise development, and a residual element that takes into

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account sector specific elements and the extent to which a firm contributes to BEE social development. The weights assigned to each of seven criterion sum to 100 points. The specific weight and operative code for each criterion is as follows:

Criteria	Weight	Operative Code
Ownership	20 points	Code 100
Management Control	10 points	Code 200
Employment Equity	10 points	Code 300
Skills Development	20 points	Code 400
Preferential Procurement	20 points	Code 500
Enterprise Development	10 points	Code 600
Residual	10 points	Code 700

16. (U) All firms will be assigned a BEE status based on their overall performance on the scorecard. The highest status is "Level One Contributor," for those firms that score 100 points or more (Note: There are a few bonus points available). The lowest possible status is "Non Complaint Contributor," for those firms that score fewer than 30 points. A firm's status determines how much BEE weight the firm and its customers can claim when tendering for government business, applying for licenses and concessions, entering into public-private partnerships, or purchasing state-owned assets. The chart below sets forth the BEE procurement recognition level afforded to transactions with Level 1 to Level 8 Contributors:

BEE Status	Qualification	BEE Procurement Recognition
Level 1 Contributor	100+ points	135%
Level 2 Contributor	85-99 points	125%
Level 3 Contributor	75-84 points	110%
Level 4 Contributor	65-74 points	100%
Level 5 Contributor	55-64 points	80%

Level 6 Contributor	45-54 points	60%
Level 7 Contributor	40-44 points	50%
Level 8 Contributor	30-39 points	10%
Non Compliant	0-29 points	0%

17. (U) For example, if a firm purchases goods or services from a Level One Contributor, it may multiply the value of its purchase by 135% to arrive a figure representing the BEE value of that transaction. It then adds this figure to the BEE value of all of its other purchases from all other suppliers to calculate one the preferential procurement component of the generic score card. In this way, preferential procurement is factored throughout the supply chain, from first tier suppliers to government as the ultimate customer. The practical effect is that all firms will have to take BEE into account in all of their transactions with other firms if they want to stay competitive for most nongovernment business, too. The objective is to create immediate access to the mainstream economy for increasing numbers of "previously disadvantaged individuals."

#### VERIFICATION OF COMPLIANCE

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18. (U) All firms must have their level of BEE contribution assigned through an annual audit by an accredited verification agency, e.g., a qualified big four accounting firm or other capable auditing group. Compliance will be assessed as of a snapshot on the date of measurement. A firm must be able to furnish evidence to support all claims. Should a firm misrepresent itself, its entire scorecard may be disqualified. Verification agencies must report misrepresentations or circumventions of the BEE Act to the Minister of Trade and Industry. Verification certificates will be valid for one year. A 12-month transitional period from the promulgation date of the codes has been allotted to allow time for the accreditation of a sufficient number of verification agencies.

19. (U) Government has appointed the South African National Accreditation System (SANAS) as the accreditation body for verification agencies. Any

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enterprise, organ of state, or public entity may apply for such accreditation. To qualify, an agency must itself maintain superior BEE status, be a member of an industry body, have sufficiently qualified personnel, comply with verification standards, maintain sufficient internal controls; and have appropriate levels of professional indemnity and insurance. The details of how accreditation will work are still being formulated.

110. (U) During the 12-month transitional period following the promulgation of all BEE Codes and while accreditation of verification agencies is taking place, the Framework provides two alternatives for firms to assess the level of their BEE contribution. One is to assess BEE contribution via the generic scorecard as set forth in the Framework. The other is to assess BEE contribution based solely upon on BEE ownership and BEE management. This alternative allows a firm to use an audit for which it has already prepared and/or paid. To calculate its total BEE score, the firm will multiply the sum of its scores on BEE ownership and BEE management by 1.92. Taking this route means that a firm can score no higher than 57.6, i.e., a "Level Five Contributor" (see Paragraph 6). In this way, the prospect of scoring more than 57.6 encourages firms to switch to the generic scorecard even during the transitional period.

#### The Status of Industry Charters

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¶11. (U) The Framework clearly explains that until the Minister of Trade and Industry has accepted an individual industry charter and promulgated it as a "Sector Code" under the Act, the charter is a voluntary arrangement that does not carry the force of law. Therefore, it cannot be used to calculate the level of a firm's BEE contribution. DTI intends to review all industry charters to assure that they conform to the principles set forth in the Framework and Codes of Good Practice. The process will give each industry the chance to argue for exceptions based on the special characteristics of its particular sector. The Minister will decide whether to promulgate the charters as individual Sector Codes, each of which will become legally binding under Code 800. Firms always have the option of using the generic scorecard in place of a Sector Code.

¶12. (U) One industry charter, the mining charter, already carries the force of law because it is specifically referred to in the Mineral and Petroleum Development Act of 2003. For this reason, the mining industry does not have to align itself with the Framework or the Codes of Good Practice at this juncture.

#### Definitions -----

¶13. (U) Black is defined as black (i.e., African), "coloured," and Indian South Africa citizens (or those who could have applied for South African citizenship, if permitted) who suffered discrimination under the apartheid regime, and their descendents.

TEITELBAUM